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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,856	02/01/2001	Hans Heyde	011881-1890	3580

7590                    08/24/2004

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[REDACTED] EXAMINER

LEO, LEONARD R

ART UNIT	PAPER NUMBER
	3753

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	M
	09/773,856	HEYDE, HANS	
	Examiner	Art Unit	
	Leonard R. Leo	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 May 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

The amendment filed on May 10, 2004 has been entered. Claims 1-28 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 7-8 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Sollich (DE 23 22 918).

Sakai discloses all the claimed limitations except a roller path below the insulating plate.

Sollich discloses a cooling tunnel comprising a conveyor belt 4; a treating region having an insulating plate 2 and cover 1, and upper cooling region 5 and lower cooling region/free space 6; and a roller path below the insulating plate (Figure 2) for the purpose of ease of maintenance.

Since Sakai and Sollich are both from the same field of endeavor and/or analogous art, the purpose disclosed by Sollich would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai a roller path below the insulating plate for the purpose of ease of maintenance as recognized by Sollich.

The recitation of "for articles of candy" is considered to be a statement of intended use, even if claimed, does not merit patentable weight unless the body of the claim refers back to, is defined by, or otherwise draws life and breadth from such intended use. *Ex parte Masham*, 2 USPQ2d 1647 (1987). However, Sollich discloses a device for treating articles of candy.

Claims 3-6, 9 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Sollich (DE 23 22 918) as applied to claims 1-2, 7-8 and 16-21 above, and further in view of Mills.

The combined teachings of Sakai and Sollich lacks a plurality of distance elements.

Mills discloses a cooling tunnel comprising a conveyor belt 7; upper cooling units 8, 9 and bottom cooling unit 10; and unlabelled distance elements (Figures 3-4) for the purpose of supporting the cooling unit.

Since Sakai and Mills are both from the same field of endeavor and/or analogous art, the purpose disclosed by Mills would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai distance elements for the purpose of supporting the cooling unit as recognized by Mills.

Claims 10-11, 13-14 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Sollich (DE 23 22 918) as applied to claims 1-2, 7-8 and 16-21 above, and further in view of Protze et al.

The combined teachings of Sakai and Sollich lacks the channel being a return conduit of the upper cooling unit.

Protze et al discloses a cooling tunnel comprising a conveyor belt 8; and upper cooling unit 1 and bottom cooling unit 10 disposed in channel 9 acting as a return conduit of the upper cooling unit (Figures 1-2) for the purpose of using the bottom cooling unit as the primary cooling source.

Since Sakai and Protze et al are both from the same field of endeavor and/or analogous art, the purpose disclosed by Protze et al would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai the channel acting as a return conduit of the upper cooling unit for the purpose of using the bottom cooling unit as the primary cooling source as recognized by Protze et al.

Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Sollich (DE 23 22 918), and further in view of Mills as applied to claims 3-6 and 9 above, and further in view of Protze et al as applied to claims 10-11 and 13-14 above.

Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Sollich (DE 23 22 918) as applied to claims 1-2, 7-8 and 16-21 above, and further in view of Raskin or Pradel.

The combined teachings of Sakai and Sollich lacks a cooling plate composed of an upper plate and lower corrugated plate.

Raskin discloses cooling plate comprising an upper plate 1 and lower plate 2 with corrugations 3 for the purpose of ease of manufacture and improved heat exchange.

Pradel discloses a cooling plate comprising an upper plate 2 and lower corrugated plate 1 for the purpose of ease of manufacture.

Since Sakai and Raskin or Pradel are both from the same field of endeavor and/or analogous art, the purpose disclosed by Raskin or Pradel would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai an upper plate and lower corrugated plate to form the cooling plate for the purpose of ease of manufacture as recognized by Raskin or Pradel.

***Response to Arguments***

The rejection under 35 U.S.C. 112, second paragraph, is withdrawn.

Applicant's arguments have been fully considered but they are not persuasive.

With respect to applicant's remarks, the secondary reference of Sollich teaches one of ordinary skill in the art to employ an enclosed cooling region where the conveyor is disposed partially therein for the purpose of ease of maintenance.

The secondary reference of Raskin or Pradel teaches one of ordinary skill in the art to employ a cooling plate composed of two plates for the purpose of ease of manufacture.

Furthermore, the Examiner appreciates applicant's opinion with respect to Sakai. However, Sakai does not explicitly state why the bottom portion of the conveyor is contained within the enclosure.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 3753

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648. Status of the application may also be obtained from the Internet: <http://pair.uspto.gov/cgi-bin/final/home.pl>

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3753

August 23, 2004